

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON

JAMES ALLEN HARPER, a resident  
and citizen of Ohio previously  
doing business as Southern Ohio  
Disposal, and  
SOUTHERN OHIO DISPOSAL LLC, an  
Ohio limited liability company,

Plaintiffs,

v.

Case No. 2:03-cv-00516

PUBLIC SERVICE COMMISSION OF  
WEST VIRGINIA, JON W. MCKINNEY,<sup>1</sup>  
in his official capacity as Chairman  
of the Public Service Commission of  
West Virginia; EDWARD H. STAATS,  
in his official capacity as  
Commissioner of the Public Service  
Commission of West Virginia; and  
R. MICHAEL SHAW, in his official capacity as  
Commissioner of the Public Service  
Commission of West Virginia,

Defendants.

WV ASSOCIATION OF SOLID WASTE HAULERS  
AND RECYCLERS,  
BFI WASTE SYSTEMS OF NORTH AMERICA, INC.,  
STEWART'S SANITATION,  
SUNRISE SANITATION SERVICES, INC.,  
TYGARTS VALLEY SANITATION, INC., and  
UNITED DISPOSAL SERVICES, INC.,

Intervenors-defendants.

JUDGMENT ORDER

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<sup>1</sup> Pursuant to Rule 25(d), Federal Rules of Civil Procedure, the court has substituted the current Chairman and Commissioners of the Public Service Commission for those originally named in the Complaint who no longer serve in those capacities.

For the reasons stated in the Findings of Fact and Conclusions of Law entered this day, it is hereby **ORDERED, ADJUDGED and DECREED** that Plaintiffs' Complaint for a permanent injunction and declaratory relief be, and the same hereby is, granted. It is declared that West Virginia Code § 24A-2-5 is invalid insofar as it requires solid waste haulers engaged in the interstate transportation of solid waste to obtain a certificate of convenience and necessity from the PSC prior to providing those services. The PSC is therefore permanently enjoined from interfering with Plaintiffs' interstate transportation of solid waste from West Virginia to other states without having first obtained a certificate of convenience and necessity from the PSC. It is further **ORDERED, ADJUDGED AND DECREED** that:

1. In accordance with Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970), the court concludes and declares that West Virginia Code § 24A-2-5 violates Plaintiffs' rights under the Commerce Clause of the Constitution of the United States.

2. The PSC, its Commissioners, and all other officers, agents, employees and attorneys are permanently enjoined from enforcement of West Virginia Code § 24A-2-5, and the PSC orders of October 21, 2002, and May 30, 2003, as to Plaintiffs.

3. Because Plaintiffs established that the PSC, while acting under color of State law, deprived them of a right secured by the Constitution, they are entitled to relief under 42 U.S.C. § 1983

and for attorney's fees and costs pursuant to Rule 54(d) of the Federal Rules of Civil Procedure and 42 U.S.C. § 1988.

4. On or before **May 1, 2006**, Plaintiffs may file a motion for attorney's fees and costs; the PSC may respond on or before **May 15, 2006**; Plaintiffs may reply on or before **May 30, 2006**.

The Clerk is requested to mail a copy of this Judgment Order to all counsel of record and to post it at <http://www.wvsc.uscourts.gov>.

ENTER: April 11, 2006

  
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Mary E. Stanley  
United States Magistrate Judge